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CONTRACTORS INSURANCE CO.,
RRG, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PREFERRED CONTRACTORS
INSURANCE COMPANY, RRG, LLC,

Plaintiff,

vs.

MD MECHANICAL; MICHAEL
ANTHONY DIAZ; NIBCO, INC.;
WESTERN NEVADA SUPPLY
COMPANY; AIG PROPERTY
CASUALTY COMPANY; and DOES
1-80, Inclusive,

Defendants.

Case No.

COMPLAINT FOR:

(1) DECLARATORY RELIEF;

(2) REIMBURSEMENT

**PURSUANT TO 28 U.S.C.
§§ 2201 and 2202**

COMES NOW plaintiff Preferred Contractors Insurance Company, RRG, LLC ("PCIC") and, on information and belief, hereby alleges the following against defendants MD Mechanical, Michael Anthony Diaz, NIBCO, Inc., Western Nevada Supply Company, AIG Property Casualty Company, and DOES 1 to 50:

NATURE OF THE ACTION

1. This is an insurance coverage action seeking declaratory relief (and reimbursement) pursuant to 28 U.S.C. §§ 2201 and 2202. PCIC seeks a judicial determination that it has no duty to defend or indemnify defendants MD

1 Mechanical and Michael Anthony Diaz under PCIC commercial general liability
2 policies issued to defendant MD Mechanical regarding claims asserted in
3 underlying actions—AIG Casualty Co. v. NIBCO, Inc., et al. (and related third-
4 party complaint), United States Federal Court – Eastern District of California,
5 Case No. 2:20-CV-00197-JAM-EFB—filed by defendants AIG Property Casualty
6 Company, NIBCO, Inc., Western Nevada Supply Co. The underlying action arises
7 from an alleged water loss and resulting damage in or about January 2017 at
8 property located at 2380 Sunnyside Lane, Tahoe City, California (“SUBJECT
9 PROPERTY”).

10
11 **PARTIES**

12 2. At all times herein mentioned, PCIC is and was a corporation
13 organized and existing under the laws of the State of Montana, duly qualified to do
14 business in the State of California as an insurance company. PCIC issued
15 commercial general liability policies during relevant periods of time to defendant
16 MD Mechanical.

17 3. Based on information and belief, and at all times herein mentioned,
18 defendant MD Mechanical is a business solely owned by defendant Michael
19 Anthony Diaz as an individual and resident of California, the specific business
20 organization form of MD Mechanical unknown, with each conducting business in
21 California under or pursuant to a California Contractor’s license (No. 475565),
22 with a principal place of business and/or residence in Portola, California, and each
is subject to the jurisdiction of the Federal Court in California.

23 4. Based on information and belief, AIG Property Casualty Company
24 (“AIG”) is and was a corporation organized and existing under the laws of the
25 State of Delaware, duly qualified to do business in California as an insurance
26 company, that provided insurance to non-parties/insureds Kevin Douglas and
27 Michelle Douglas for the SUBJECT PROPERTY. AIG has alleged it paid its
28 insureds \$2,883,125.65 for damages arising from the alleged water loss and

1 resulting damage in or about January 2017 at the SUBJECT PROPERTY, and
2 based thereon asserts it is subrogated to its insureds rights and has now brought the
3 underlying complaint—AIG Casualty Co. v. NIBCO, Inc., et al. (and related third-
4 party complaint), United States Federal Court – Eastern District of California,
5 Case No. 2:20-CV-00197-JAM-EFB (“UNDERLYING COMPLAINT”)—against
6 defendants NIBCO, Inc. and Western Nevada Supply Co. for damages.

7 a. EXHIBIT A: A true and correct copy of the operative
8 UNDERLYING COMPLAINT is attached hereto, and
9 incorporated herein as if fully restated, as Exhibit “A.”

10 5. Based on information and belief, and at all times herein mentioned:
11 (a) defendant NIBCO, Inc. is and was a corporation organized and existing under
12 the laws of the State of Indiana, with its principal place of business in Elkhart,
13 Indiana, and is subject to the jurisdiction of the Federal Court in California; and
14 (b) defendant Western Nevada Supply Co. is and was a corporation organized and
15 existing under the laws of the State of Nevada, with its principal place of business
16 in Sparks, Nevada. On or after service of the UNDERLYING COMPLAINT,
17 defendants NIBCO, Inc. and Western Nevada Supply Co. filed a related THIRD-
18 PARTY COMPLAINT for Equitable Indemnity against defendants MD
19 Mechanical and Michael Anthony Diaz.

20 b. EXHIBIT B: A true and correct copy of the operative related
21 THIRD-PARTY COMPLAINT is attached hereto, and
22 incorporated herein as if fully restated, as Exhibit “B.”

23 6. The true names and capacities, whether individual, corporate,
24 associate, or otherwise of defendants named herein as DOES 1-80 are unknown to
25 PCIC who, therefore, sues said defendants, and each of them, by fictitious names,
26 and will ask leave of the Court to amend this complaint to show their true names
27 and capacities when the same have been ascertained. PCIC is informed and
28 believes and thereon alleges that defendants sued herein as DOES 1 through 80,
inclusive, do in some manner claim some right, interest or entitlement arising from

1 the UNDERLYING COMPLAINT (*e.g.*, Ex. “A”) and related THIRD-PARTY
2 COMPLAINT (*e.g.*, Ex. “B”), and/or the claims asserted therein, under a policy or
3 policies of insurance issued by PCIC.

4 7. PCIC is informed and believes and thereon alleges that at all times
5 herein mentioned, defendants MD Mechanical and Michael Anthony Diaz (as the
6 owner of MD Mechanical), and DOES 1 through 20, and each of them, were the
7 agents, servants, employees, insurers, contractors or subcontractors for MD
8 Mechanical and/or Michael Diaz (as the owner of MD Mechanical) and each other,
9 and/or joint venturers of each and one another.

10 8. PCIC is informed and believes and thereon alleges that at all times
11 herein mentioned, defendant AIG and DOES 21 through 40, and each of them,
12 were the agents, servants, owners, insurers, re-insurers, subsidiaries or otherwise
13 related to each other, and/or joint venturers of each and one another.

14 9. PCIC is informed and believes and thereon alleges that at all times
15 herein mentioned, defendant NIBCO, Inc. and DOES 41 through 60, and each of
16 them, were the ventures agents, servants, employees, insurers, contractors or
17 subcontractors for each other, and/or joint venturers of each and one another.

18 10. PCIC is informed and believes and thereon alleges that at all times
19 herein mentioned, defendant Western Nevada Supply Co. and DOES 61 through
20 80, and each of them, were the ventures agents, servants, employees, insurers,
21 contractors or subcontractors for each other, and/or joint venturers of each and one
22 another.

23 JURISDICTION AND VENUE

24 11. This Court has subject matter jurisdiction over this action for
25 declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the
26 Federal Rules of Civil Procedure.

27 12. An actual justiciable controversy between PCIC and defendants, and
28 each of them, within the meaning of 28 U.S.C. § 2201 regarding exists as more

1 particularly described below regarding: (1) whether PCIC has a duty to defend or
2 indemnify under the PCIC Policies identified in this Complaint with respect to the
3 claims asserted in the UNDERLYING COMPLAINT (e.g., Ex. “A”) and related
4 THIRD-PARTY COMPLAINT (e.g., Ex. “B”); and (2) whether PCIC is entitled to
5 reimbursement from its insureds (defendants MD Mechanical and/or Michael
6 Anthony Diaz) of amounts paid in defense/indemnity of non-covered claims
7 asserted in the UNDERLYING COMPLAINT (e.g., Ex. “A”) and related THIRD-
8 PARTY COMPLAINT (e.g., Ex. “B”).

9 13. This Court also has diversity jurisdiction pursuant to 28 U.S.C.
10 § 1332(a)(1) because the amount in controversy exceeds the sum or value of
11 \$75,000.00, exclusive of interest and costs, and the suit is between citizens of
12 different states.

13 14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that a
14 substantial part of the events or omissions giving rise to this claim—e.g., the
15 UNDERLYING COMPLAINT (e.g., Ex. “A”) and related THIRD-PARTY
16 COMPLAINT (e.g., Ex. “B”) are venued in this judicial district, the facts and/or
17 allegations giving rise to the UNDERLYING COMPLAINT (e.g., Ex. “A”) and
18 related THIRD-PARTY COMPLAINT (e.g., Ex. “B”) occurred in this judicial
19 district, and the PCIC Policies were issued to defendant MD Mechanical as a
20 resident of this judicial district—occurred in this judicial district and the
21 defendants reside in this judicial district.

22 THE POLICIES

23 15. PCIC did have in force and effect Commercial General Liability
24 policy numbers PCIC5015-PCA76843-01 (eff. 5/22/2011-2012) issued to
25 defendant MD Mechanical.

- 26 a. EXHIBIT C: A true and correct copy of PCIC5015-
27 PCA76843-01 (eff. 5/22/2011-2012) is attached herewith as
28

Exhibit “C” and incorporated herein by this reference as though set forth in full.

16. PCIC did have in force and effect Commercial General Liability policy numbers PCIC5015-PCA76843-02 (eff. 5/22/2012-2013) issued to defendant MD Mechanical.

a. EXHIBIT D: A true and correct copy of PCIC5015-PCA76843-02 (eff. 5/22/2012-2013) is attached herewith as Exhibit “D” and incorporated herein by this reference as though set forth in full.

17. PCIC did have in force and effect Commercial General Liability policy numbers PCIC5015-PCA76843-03 (eff. 5/22/2013-2014) issued to defendant MD Mechanical.

a. EXHIBIT E: A true and correct copy of PCIC5015-PCA76843-03 (eff. 5/22/2013-2014) is attached herewith as Exhibit “E” and incorporated herein by this reference as though set forth in full.

18. PCIC did have in force and effect Commercial General Liability policy numbers PCIC5015-PCA76843-04 (eff. 5/22/2014-2015) issued to defendant MD Mechanical.

a. EXHIBIT F: A true and correct copy of PCIC5015-PCA76843-04 (eff. 5/22/2014-2015) is attached herewith as Exhibit “E” and incorporated herein by this reference as though set forth in full.

19. PCIC did have in force and effect Commercial General Liability policy numbers PCIC5015-PCA76843-05 (eff. 5/22/2015-2016) issued to defendant MD Mechanical.

a. EXHIBIT G: A true and correct copy of PCIC5015-PCA76843-05 (eff. 5/22/2015-2016) is attached herewith as Exhibit “E” and incorporated herein by this reference as though

1 set forth in full.

2 20. PCIC did have in force and effect Commercial General Liability
3 policy numbers PCIC5015-PCA76843-06 (eff. 5/22/2016-2017) issued to
4 defendant MD Mechanical.

5 a. EXHIBIT H: A true and correct copy of PCIC5015-
6 PCA76843-06 (eff. 5/22/2016-2017) is attached herewith as
7 Exhibit “E” and incorporated herein by this reference as though
8 set forth in full.

9
10 **THE DISPUTE**

11 21. This matter arises insurance claims for liability coverage based on an
12 alleged water loss and resulting damage in or about January 2017 at property
13 located at 2380 Sunnyside Lane, Tahoe City, California (“SUBJECT
14 PROPERTY”). As alleged by defendant AIG in the UNDERLYING
15 COMPLAINT, and based on its investigation, the water loss and resulting damage
16 at the SUBJECT PROPERTY was caused by a defect in a water valve designed,
17 approved, recommended, manufactured, assembled, built, tested, inspected,
18 marketed, distributed, contracted for manufacture and/or sold/distributed by
19 defendants NIBCO, Inc. and/or Western Nevada Supply Co. (Ex. “A”, ¶¶ 6–14.)

20 22. Defendant AIG caused to be filed the UNDERLYING COMPLAINT
21 asserting causes of action in subrogation for damages therein against defendants
22 NIBCO, Inc. and Western Nevada Supply Co. (and DOES 1 to 25). The
23 UNDERLYING COMPLAINT attached herein as EXHIBIT “A” is incorporated
24 again by this reference as though set forth in full.

25 23. Defendants NIBCO, Inc. and Western Nevada Supply Co., on or after
26 service of the UNDERLYING COMPLAINT, caused to be filed the related
27 THIRD-PARTY COMPLAINT asserting a cause of action for Equitable Indemnity
28 against defendants MD Mechanical and Michael Anthony Diaz regarding the

1 claims asserted by AIG in the UNDERLYING COMPLAINT. Based on
2 information and belief, it is understood claims for equitable indemnity against
3 defendants MD Mechanical and Michael Anthony Diaz are based on their
4 installation of the water valve at issue. The related THIRD-PARTY COMPLAINT
5 is attached herein as EXHIBIT “B” is incorporated again by this reference as
6 though set forth in full.

7 24. Following service of the THIRD-PARTY COMPLAINT, the claims
8 against defendants MD Mechanical and Michael Anthony Diaz were tendered for
9 defense and/or indemnification to PCIC under the PCIC Policies attached herein as
10 Exhibits “C”–“H”.

11 25. PCIC accepted tender of defense on behalf of defendants MD
12 Mechanical and Michael Anthony Diaz, subject to an express written reservation
13 of rights letter dated April 2, 2020 (the “Reservation of Rights”).

14 a. EXHIBIT I: A true and correct copy of the written Reservation
15 of Rights dated April 2, 2020 is attached hereto as Exhibit “I”
16 and incorporated herein by this reference as though set forth in
17 full.

18 26. A dispute has arisen between the parties regarding their respective
19 rights and obligations in connection with the PCIC Policies (Exs. “C”–“H”)
20 regarding the UNDERLYING ACTION and related THIRD-PARTY
21 COMPLAINT (Exs. “A”–“B”). PCIC reserved the right to deny coverage, obtain a
22 judicial determination of coverage, and reimbursement of amounts paid in defense
23 and/or indemnification of non-covered claims in accord with an express written
24 reservation of rights letter dated April 2, 2020 (Ex. “I”). PCIC does not have an
25 adequate remedy at law to adjudicate said controversy. Based thereon, PCIC
26 requests a judicial declaration of its rights and obligations, and a right to
27 reimbursement of amounts paid for non-covered claims, pursuant to 28 U.S.C.
28 §§ 2201 and 2202.

**FIRST CAUSE OF ACTION
DECLARATORY RELIEF
PURSUANT TO 28 U.S.C. §§ 2201
(AGAINST ALL DEFENDANTS)**

27. PCIC repeats and repleads each and every allegation contained in paragraphs 1 through 25 as though set forth in full.

28. PCIC contends that as there is no actual or potential insurance coverage under the PCIC Policies (Exs. “C”–“H”) for the claims asserted in the UNDERLYING COMPLAINT and related THIRD-PARTY COMPLAINT (Exs. “A”–“B”); it is under no obligation to defend or indemnify defendants MD Mechanical and Michael Anthony Diaz and DOES 1 through 20 regarding claims asserted in the UNDERLYING COMPLAINT (Ex. “A”) or related THIRD-PARTY COMPLAINT (Ex. “B”), and that it is under no obligation in connection with any settlement or judgment arising from the – “ UNDERLYING COMPLAINT (Ex. “A”) or related THIRD-PARTY COMPLAINT (Ex. “B”) for the reasons and policy provisions expressly set forth in the express written reservation of rights letter dated April 2, 2020 (Ex. “I”).

a. The damages and/or claims alleged against the PCIC’s insureds (defendants MD Mechanical and Michael Anthony Diaz) in the UNDERLYING COMPLAINT (Ex. “A”) or related THIRD-PARTY COMPLAINT (Ex. “B”) occurred as a result of an incident or “occurrence” (e.g., water valve failure) at the SUBJECT PROPERTY in or about January 13, 2017 and are based on their work at the SUBJECT PROPERTY which was and is in excess of 5000 square feet.

b. PCIC did have in force and effect Commercial General Liability policies issued to MD Mechanical effective from May 22, 2011–May 22, 2017 (Exs. “C”–“H”). Each PCIC policy

issued to defendant MD Mechanical provides liability coverage under the plain language of the policies for “bodily injury” or “property damage” caused by an “occurrence” that first takes place or begins during the “policy period” (as those terms are defined under the PCIC POLICY). Accordingly, liability coverage (if any) for the claims against defendants MD Mechanical and Michael Anthony Diaz under the PCIC Policies is limited to PCIC Policy No. PCIC5015-PCA76843-06 effective May 22, 2016–May 22, 2017 (Ex. “H”).

- c. Liability coverage under the referenced PCIC policies is subject to certain additional exclusions and/or limitations addressing the claims at issue, including but not limited to those set forth in the express written reservation of rights letter dated April 2, 2020 (Ex. “I”) and incorporated as if fully restated herein.
- d. Specifically, liability coverage for the claims at-issue under PCIC Policy No. PCIC5015-PCA76843-06 effective May 22, 2016–May 22, 2017 (Ex. “H”)—the liability policy at issue based on the incident or “occurrence” giving rise to the damages at issue taking place on or about January 13, 2017—is subject to and excluded from coverage pursuant to the plain language of the following “Residential Size Restriction” Exclusion, which states:

This insurance does not apply to:

al. Residential Size Restriction

Any claim or “suit” for “bodily injury”, “property damage”, or “personal and advertising injury”, arising out of, resulting from, caused by, contributed to by, or in any way related, in whole or in part, from any work or operations performed by you or any contractors, subcontractors, leased workers, independent contractors, or individuals regardless of employment status, working

1 directly or indirectly on your behalf in connection with
2 any residential project in which the residential dwelling
equals or exceeds five thousand square feet (5,000 sq. ft.).

3 For purposes of this exclusion, “residential project” shall
4 include any and all work performed at the residence or on
the property in which the dwelling is located.

5 For purposes of this exclusion, the 5,000 square foot
6 residential dwelling restriction shall include any
7 additional dwellings or living areas on the property,
including, but not limited to guest house(s), or any
structure used as a residence.

8
9 28. PCIC is informed and believes, and on such information and belief
10 alleges, that defendants, and each of them, dispute PCIC’s contentions regarding
11 the lack of coverage under the PCIC Policies (Exs. “C”–“H”) as set forth above,
12 and as expressly detailed in the express written reservation of rights letter dated
13 April 2, 2020 (Ex. “I”), and it has no adequate remedy at law. Consequently, PCIC
14 requires a judicial declaration of its rights and obligations and the rights and
15 obligations of the other parties herein.

16
17 **SECOND CAUSE OF ACTION**

18 ***BUSS REIMBURSEMENT***

19 **PURSUANT TO 28 U.S.C. §§ 2202**

20 **(AGAINST MD MECHANICAL, MICHAEL ANTHONY DIAZ**

21 **AND DOES 1 TO 20, INCLUSIVE)**

22 29. PCIC repeats and repleads each and every allegation contained in
23 paragraphs 1 through 28 as though set forth in full.

24 30. PCIC has afforded defendants MD Mechanical, Michael Anthony
25 Diaz, and DOES 1 TO 20, a full and complete defense to the UNDERLYING
26 COMPLAINT (Ex. “A”) and/or related THIRD-PARTY COMPLAINT (Ex. “B”),
27 subject to and in accord with the express written reservation of rights letter dated
28 April 2, 2020 attached hereto as Ex. “I” and incorporated herein, including but not

1 limited to a reservation of its right to obtain reimbursement for payment(s) of non-
2 covered defense fees, costs and other payments in accordance with the principles
3 set forth in *Buss v. Superior Court* (1997) 16 Cal.4th 35. (See, Ex. "I", p. 15.)

4 31. PCIC is entitled to reimbursement from defendants MD Mechanical,
5 Michael Anthony Diaz and DOES 1 through 20 for defense fees, costs and all sums
6 paid regarding defense and/or indemnity of claims in the UNDERLYING
7 COMPLAINT (Ex. "A") and/or related THIRD-PARTY COMPLAINT (Ex. "B")
8 that are not covered under the PCIC Policies (Exs. "C"–"H") in accord with the
9 express written reservation of rights letter dated April 2, 2020 (Ex. "I") or,
10 alternatively, it requests that the Court allocate payments in accordance therewith
11 and award reimbursement in an amount according to proof.

12
13 **PRAYER**

14 WHEREFORE, plaintiff Preferred Contractors Insurance Company, RRG,
15 LLC prays for judgment as follows:

16
17 **AS TO THE FIRST CAUSE OF ACTION**
18 **FOR DECLARATORY RELIEF**
19 **(AGAINST ALL DEFENDANTS)**

20 1. A judicial declaration that plaintiff Preferred Contractors Insurance
21 Company, RRG, LLC has no obligation to defend or indemnify defendants MD
22 Mechanical, Michael Anthony Diaz and DOES 1 through 20 under the PCIC
23 Policies (Exs. "C"–"H") in connection with the UNDERLYING COMPLAINT
24 (Ex. "A") and/or related THIRD-PARTY COMPLAINT (Ex. "B"); and that
25 plaintiff Preferred Contractors Insurance Company, RRG, LLC is under no
26 obligation in connection with any settlement, award or judgment against
27 defendants MD Mechanical, Michael Anthony Diaz and DOES 1 through 20 (or in
28 favor of defendants AIG Property Casualty Co., NIBCO, Inc., Western Nevada

1 Supply Co., or DOES 21-80, in connection with the UNDERLYING
2 COMPLAINT (Ex. "A") and related THIRD-PARTY COMPLAINT (Ex. "B").
3

4 **AS TO THE SECOND CAUSE OF ACTION**
5 **FOR *BUSS* REIMBURSEMENT**
6 **(AGAINST MD MECHANICAL, MICHAEL ANTHONY DIAZ**
7 **AND DOES 1 TO 20, INCLUSIVE)**

8 2. A judicial declaration that plaintiff Preferred Contractors Insurance
9 Company, RRG, LLC is entitled to reimbursement of fees, costs and payments
10 incurred in the defense of the UNDERLYING COMPLAINT (Ex. "A") and related
11 THIRD-PARTY COMPLAINT (Ex. "B") from defendants MD Mechanical,
12 Michael Anthony Diaz and DOES 1 through 20, inclusive, in an amount according
13 to proof.
14

15 **AS TO ALL CAUSES OF ACTION**

16 3. For costs of suit incurred herein; and

17 4. For such other and further relief as the Court deems just and proper.
18

19 DATED: September 24, 2020

WILCOX DUNAKIN CHRISOPOULOS, LLP

20
21 By: 

22 CHRISTOPHER S. DUNAKIN
23 Attorneys for Plaintiff PREFERRED
24 CONTRACTORS INSURANCE
25 COMPANY, RRG, LLC
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